IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

Bail Appl..No. 5289 of 2007()

CRIME NO. 210/07 OF NADAKKAVU POLICE STATION
CRLMC.797/2007 of D.C. & SESSIONS COURT,KOZHIKODE

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PETITIONER/ACCUSED

SYED MUHAMMED AMEEN BAFAKYH,
AGED 48 YEARS, S/O.SAYED ABDULLA BAFAKYH,
SHIHAB MANZIL, FRANCIS ROAD, P.O.PARAPPIL,
IDIYANKARA, CALICUT.

BY ADV. SRI.P.V.MADHAVAN NAMBIAR
SRI.M.A.KHADIRKUNJU
SRI.PMA.KALAM

RESPONDENTS: STATE/COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. STATION HOUSE OFFICER,
NADAKKAVU POLICE STATION,
KOZHIKODE.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/09/2007, ALONG WITH BA NO. 5300 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5289 & 5300 OF 2007

Dated this the 7th day of September, 2007

ORDER

These applications are for anticipatory bail. The petitioners are accused 1 and 2. Crime is registered, inter alia, under Secs.3 and 7 of the Essential Commodities Act read with the relevant Rules under the Kerala Rationing Order. The petitioners are the Authorised Wholesale Distributors appointed under the Kerala Rationing Order. The crux of the allegations against them is that they illicitly sold to strangers a large consignment of ration wheat issued to them and allowed such consignment to be moved out of the godowns of the petitioners to be carried to a consignee at Coimbatore. The vehicle was intercepted by the officials en route at Calicut. The driver and the crew confessed that the consignment was loaded from the godowns of the petitioners. The consignment contained ration wheat which was imported from Russia.

A crime has been registered. Investigation is in progress. Accused 1 and 2 – the petitioners herein, are the licensees. Accused 3 and 4 are their Managers. Accused No.5 is a trader in Calicut who allegedly helped the petitioners in the illicit transportation by making a false bill to show that the consignment was covered by such bill. Accused 6 and 7 are the lorry driver and the crew and accused No.8 is a person connected with the transport in lorry. The seizure took place on 21/6/07. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submit that the petitioners are absolutely innocent of the allegations levelled against them. It is submitted that there is no satisfactory data to indicate that the seized article is ration wheat. It is further submitted that, at any rate, there is no satisfactory material to show that the consignment intercepted and seized by the police did come out of the godowns of the petitioners. The learned counsel rely on the fact that when the inspection/stock verification of the A.W.D. was conducted later on 28/6/07, there was no significant shortage found in the godown of the one of the licensees and there was no shortage at all in so far as the other licensee is concerned. It is further contended that the

petitioners are only licensees and they have no involvement in the day-to-day activities. Such activities are conducted by the Managers appointed by them. Such appointment is recognized by the departmental authorities also. In these circumstances, the petitioners do not deserve to suffer and endure the trauma of arrest and detention. Anticipatory bail may be granted to the petitioners, it is prayed.

3. These applications are opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that sufficient data pointing to the complicity of the petitioners has by now been collected. The driver and the crew, who were present in the vehicle at the time of interception, have promptly led the detecting officer to the godowns of the petitioners asserting that the articles were loaded from those godowns. We have satisfactory indications to suggest that the wheat in question is imported Russian wheat for distribution through ration shops. In these circumstances, the learned Public Prosecutor submits that a serious view is liable to be taken. Articles intended for distribution through the public distribution system are being siphoned out by the influential and powerful people. This has got to be prevented with an iron hand. A serious view may be taken and, at any rate, this is not a fit case where the

extraordinary equitable discretion under Sec.438 of the Cr.P.C. can or ought to be invoked.

4. I have considered all the relevant inputs. Powers under Sec.438 of the Cr.P.C. are to be invoked only sparingly and in exceptional cases in aid of justice. The Parliament in its wisdom has conceded such equitable discretion to superior courts only without giving specific guidelines as to the circumstances under which such discretion can be invoked and exercised. The assumption is that such superior courts will be able to identify cases in which such discretion can and ought to be invoked. Such discretion is certainly not to be invoked as a matter of course. Exceptional and compelling reasons must be shown to exist to justify such invocation. Gravity of the offence is certainly a relevant criteria in deciding whether such powers must be invoked or not. Any right thinking member of the polity must perceive the need to frown upon the attempt by the powerful and greedy persons to siphon out the articles intended for distribution through the public distribution system to less fortunate members of the community to make undeserved profits. This Court, I am satisfied, will not be justified in invoking the discretion under Sec.438 of the Cr.P.C. in favour of the petitioners. Satisfactory inputs are there pointing to the

complicity of the petitioners. The question is not whether the conviction can be entered or not. The needle of suspicion clinchingly and unerringly points to the petitioners. The fact that they have persons to manage their business or the fact that they were not personally present at the scene of the crime are not, according to me, sufficient circumstances to justify the invocation of the discretion. This, I am satisfied, is an eminently fit case where the petitioners must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, these bail applications are dismissed; but with the observation that if the petitioners surrender before the Investigating Officer or the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

Nan/ //true copy// P.S. to Judge